IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 395/2000

Decided on: October 20, 2006

The New India Insurance Company **…..Appellant.**

VERSUS

Gurbant Kaur and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. K.D. Sood, Advocate.**

For the Respondents : **Mr. B.K. Malhotra, Advocate, for respondents No.1 and 2.**

None for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Award passed by the Commissioner, under Workmen's Compensation Act, in the case of death of driver of Van No. HPY-1415, is assailed by the Insurance Company on the following grounds:

1. The parents of the deceased driver, who filed the claim petition, had earlier filed a petition before the Motor Accident Claims Tribunal, Jallandhar, for compensation, and, hence, the claim petition was barred under Section 167 of the Motor Vehicles Act.
2. The appellant had been appearing before the Commissioner, under the Workmen's Compensation Act, but it could not file reply because the copies of the papers, on which reliance was placed by the respondents-petitioners, were not made available to the counsel of the appellant, despite repeated directions.
3. The appellant was ordered to be proceeded against ex-parte by the Commissioner, under the Workmen's

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Whether the reporters of the local papers may be allowed to see the Judgment?

Compensation Act, on 5.4.1999 on account of the fact that the counsel for the Insurance Company did not appear when the case was called and by the same order, the Commissioner allowed the petition without any evidence having been led by the respondents and thus the award is without any evidence and, hence, no award in the eyes of law.

3. I have heard the learned counsel for the parties and perused the record.

4. It is made out from the zimini orders recorded by the Commissioner, under the Workmen's Compensation Act, that copies of the documents, upon which reliance was placed by the respondents-claimants, had not been made available to the counsel for the Insurance Company-appellant in spite of various opportunities having been granted and for this reason the Insurance Company could not file any reply. On 5.4.1999, on which date the matter was again fixed for the compliance of the order regarding supply of the copies of the aforesaid documents, the appellant's counsel did not appear. Therefore, an order for ex-parte proceedings against the appellant was passed and by the same order the petition had been allowed and compensation awarded, without recording any evidence. The order is, thus, illegal, being not supported by any evidence. The same is set aside. The application is remanded to the Commissioner, under Workmen's Compensation Act, with a direction to dispose of the same in accordance with law.

5. Parties are directed to appear before the Commissioner, under Workmen's Compensation Act, on 24th November, 2006.

(Surjit Singh)
Judge.

October 20, 2006(sd)